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March 6, 1975

Mr. Lowe Ashton  
Heber Creeper  
P.O. Box 69  
Heber City, Utah 84032

Dear Mr. Ashton:

You have asked our opinion concerning the possible problems with your lease agreement dated January 29, 1971 between Wasatch Railway Museum and Foundation, Inc., (Museum), and the Wasatch Mountain Railway and Development Company (Heber Creeper). Specifically, you wanted to know whether this agreement was in jeopardy because it may possibly jeopardize the tax free status of the Museum. It is our understanding that the Museum is a foundation qualifying under Section 501(c)(3) and it is also a private foundation as defined in Section 509.

Section 507 outlines the circumstances under which a private foundation status will be revoked. Basically, these are when there are willful repeated or a willful and flagrant acts giving rise to tax liability under Chapter 42 of the Internal Revenue Code. Chapter 42 deals with taxes on private foundations. It includes taxes on self-dealing, taxes on failure to distribute income, taxes on excess business holdings, taxes on investments which jeopardize charitable purposes and taxes on taxable expenditures. Assuming that the private foundation, or any of its members, have less than a 20% ownership in Heber Creeper, then this lease agreement will not cause any taxes under Chapter 42. Because of this fact, this lease agreement should not jeopardize the tax free status of the Museum.

Very truly yours,

JONES, WALDO, HOLBROOK & McDONOUGH

*Ronny L. Cutshall*  
Ronny L. Cutshall

RLC/rm

